

### **Remarks**

Prior to this Amendment, claims 1-18 were pending in the Application. Herein, Applicants request that claims 1-6, 8, and 13-14 be amended; that claims 7 and 16 be cancelled, and that claims 19 and 20 be added. Therefore, upon entry of the Amendment, claims 1-6, 8, 13-14, and 17-20 will be pending in the Application. Entry of this Amendment, reconsideration, and allowance of the pending claims is respectfully requested.

### **Claims – Art Rejections**

In paragraph 2 of the Office Action, the Examiner rejected claims 1-2, 5, 6, and 13 under 35 U.S.C. §102(e) as being anticipated by *Collin* (U.S. Pat. No. 6,148,080). In response, Applicants have amended claim 1 to clearly specify an important novel feature of the present invention, namely that the elongated recess is not merely the parting line that may be found on prior phones. The anti-sealing effect of the elongated recess derives from the fact that it is purposely formed wide and deep enough to frustrate any sealing effect by not permitting the ear to form an airtight seal even if it is placed against the speakerphone in the vicinity of a speaker port. (See for example Figure 4 of the present Application.) This requirement has now been explicitly recited. The parting line that may have been present on prior phones would not naturally meet this requirement. Note that *Collin* does not illustrate or discuss a parting line, with the possible exception of the (unlabeled) line appearing between the back face 1 and the battery cover 2 in Fig. 1. While the edge of the phone of Fig. 1 in *Collin* is illustrated as a 'double' line, it is not clear why this is so. It is clearly not an isometric or perspective drawing (compare Fig. 3), and the white space between the two lines is not separately labeled. IN any event, the human ear is somewhat soft and fleshy at its extremity, which contributes to its ability to form a seal in the first place, and which could substantially or completely overcome the effect of the minimal irregularity produced by the parting line.

Nor does *Collin* disclose the use of an elongated recess, as that term has been clarified above. The elongated recess of the present invention is also not merely a speaker port that is not round. The effectiveness of the elongated recess is not due simply its shape, but to the fact that it would inevitably extend beyond the pinna of the user's ear even when it is pressed against the speakerphone. Considering the openings 26 on the back face of the phone in Figures 6 and 7 of *Collin*, for example, they appear would appear not to extend much if at all beyond the closing area 22 (which approximates the area sealed off by the user's ear). And extending them far enough to frustrate the sealing effect is nowhere discussed.

Not only are the openings 26 on the back face of the *Collin* phone (albeit at its junction with the side wall 19 – see col. 4, lines 48-54), but as such they are highly visible. Placing a (preferably smaller) speaker port in communication with a sufficiently elongated recess formed on the peripheral (side) wall as claimed in the present invention also has the benefit of somewhat hiding the speaker port from the user to avoid any temptation to hold it close to the ear at all. *Collin* is simply not directed at the solution of the present invention, and cannot anticipate claim 1, at least as presently recited. Claims 2, 5, and 6 are directly or indirectly dependent from claim 1 and are therefore believed to be distinguishable from the cited prior art for the same reasons. Claim 13 has been amended analogously to claim 1 to more clearly recite the novel features of the present invention and is therefore also believed to be distinguishable as well.

For this reason Applicants respectfully suggest that this ground for rejection has been overcome, especially when this Amendment is entered to more clearly recite the key novel features of the present invention.

In paragraphs 4 of the Office Action, the Examiner rejected claims 3-4, 7-8, 14, 16-18 under 35 U.S.C. §103(a) as being unpatentable over *Andersen* (U.S. Pat. No. 6,658,110). In response, Applicants note that each of these claims is dependent directly or indirectly from one of independent claims 1 or 13, and are therefore distinguishable from the prior art for the same reasons. In this regard, note that *Andersen* does not teach or disclose an elongated reference. Fig. 1 is a sectional view and third acoustic connection 43 appears to be simply a small opening at the parting line. (See col. 5, lines 7-14; also compare Figs. 3 and 4, where the relative size of the other acoustic connections is apparent.) If acoustic connection 43 were somehow a parting

line, then the two shells 10 and 11 would not be in contact with each other at all. And as mentioned above (and confirmed in *Andersen* at col. 3, lines 64-66), the parting line is unlikely – and perhaps intentionally so -- to be significant enough to amount to the elongated recess of the present invention. Compare also Fig. 4 of *Andersen* with Figures 5a-5c of the present Application.

In addition, Applicants believe that acoustic connection 43 is meant simply to connect the airspace behind the transducer 20 (sealed off with tape 13) with the external environment, and therefore may not properly considered a speaker port as that term is used in claiming the present invention.

For these reasons, Applicants respectfully suggest that this ground for rejection has also been overcome.

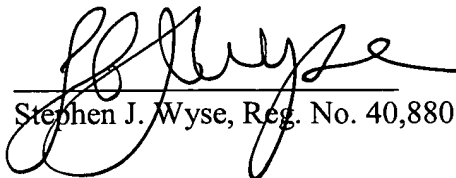
Finally, new claims 19 and 20 depend directly or indirectly from, and is distinguishable from the cited art for the same reasons as, claim 1 as discussed above.

In light of the reasons given above, and the amendments proposed herein, Applicants request that this Amendment be entered, that the rejections traversed above be reconsidered and that claims 1-6, 8, 13-14, and 17-20 be allowed. In addition, given the final nature of the rejections, the Examiner is requested to contact the Applicant if this response will not be considered, or on the other hand if additional amendments could be made to place the claims in condition for allowance.

Respectfully submitted,

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